STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Hon. Michael R. Smolenski, Presiding Justice

Supreme Court No. 127152

Court of Appeals No. 250197

WEXFORD MEDICAL GROUP,

Petitioner-Appellant,

Michigan Tax Tribunal
No. 250197, LC No. 00-276304

v

BRIEF OF MICHIGAN HEALTH & HOSPITAL ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER-APPELLANT

CITY OF CADILLAC,

Respondent-Appellee.

EXHIBITS

/

SERVICE OF PROCESS

KIMBERLY J. COMMINS (P55506)
MICHAEL J. PHILBRICK (P58125)
Attorneys for Amicus Curiae
Michigan Health & Hospital Association
Hall, Render, Killian, Heath & Lyman, PLLC
201 W. Big Beaver, Suite 315
Troy, MI 48084
(248) 740-7505

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KIMBERLY J. COMMINS (P55506)
MICHAEL J. PHILBRICK (P58125)
Attorneys for Amicus Curiae
Michigan Health & Hospital Association
Hall, Render, Killian, Heath & Lyman, PLLC
201 W. Big Beaver, Suite 315
Troy, MI 48084
(248) 740-7505

DAVID S. MCCURDY (P24095)
ROGER WOTILA (P22561)
CYNTHIA WOTILA (P36043)
Attorneys for Respondent-Appellee
City of Cadillac
McCurdy & Wotila, PC
120 West Harris Street
Cadillac, MI 49601
(231) 775-1391

JOHN D. PIRICH (P23204)
STEWART L. MANDELL (P33781)
Attorneys for Petitioner-Appellant
Wexford Medical Group
Honigman Miller Schwartz and Cohn LLP
222 North Washington Square, Suite 400
Lansing, MI 48933
(517) 377-0712
(313) 465-7420

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STATEMENT OF INTEREST

The Michigan Health & Hospital Association ("MHA") is a membership organization representing 145 Michigan acute-care hospitals. In addition to representing all but two of Michigan's acute-care hospitals, MHA's members also include psychiatric, rehabilitative, and other specialty hospitals. Its members include nonprofit, public and private hospitals, both rural and urban. MHA has served its members and, thereby, the patients they treat, in a leadership role since 1919 by developing and promoting programs and positions that have enhanced Michigan hospitals' ability to deliver comprehensive, high-quality, and cost-efficient care.

This case presents issues that will have a far-reaching effect on the provision of health care in the State of Michigan and has already greatly impacted the financial stability of many nonprofit health care providers. Petitioner-Appellant operates a clinic that maintains an "open-access" policy, accepting all Medicare and Medicaid patients, despite the national trend to refuse such patients because of reimbursement rates that are far below the actual costs of providing care to the elderly and the needy. Nonprofit health care providers that accept Medicare and Medicaid patients typically operate at a loss in furtherance of their charitable care policies to ensure that the communities in which they are located have access to medical care without regard to a person's ability to pay. Many of the affected providers provide care in medically underserved areas, where inability to access medical care will become a frightening reality if these providers close their doors because they cannot handle the extra tax burden in addition to all the financial burdens they already face in ensuring that their local communities have quality health care.

The holding in ProMed Healthcare v City of Kalamazoo, 249 Mich App 490; 644 NW2d 47 (2002), has become the Holy Grail for cities and municipalities searching for new sources of funding in tough economic times. Many similar charitable exemption cases are currently

pending before the Michigan Tax Tribunal. If all of these nonprofit, charitable providers are forced to pay property taxes, it would indeed add funds to a city or municipality in the short-term; however, the long-term consequences would be devastating to all the communities involved. Many nonprofit providers will simply close their doors, permanently drying up the new-found revenue source. When this happens, patient access to quality health care in many of these communities will become an increasingly difficult, if not impossible, endeavor. The human toll is simply too high.

This very real possibility of limited or no access to quality health care for a significant number of Michigan citizens underscores the basis of this Appeal by the Petitioner-Appellant. Together, these issues involve legal principles of major significance to Michigan's jurisprudence and to Amicus Curiae members. Further, the decision of the Court of Appeals is clearly erroneous and will cause material injustice not just to the Petitioner-Appellant and Amicus Curiae members, but to all nonprofit health care providers in the State of Michigan.

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Amicus Curiae adopts by reference the Statement of Material Facts and Proceedings of Petitioner-Appellant.

SUMMARY OF ARGUMENT

Wexford Medical Group (hereinafter "Wexford") owns and operates a charitable medical clinic (hereinafter "Wexford Clinic") in Cadillac, Michigan. Wexford has historically been denied property tax exemption. However, Wexford qualifies for charitable exemption under MCL 211.7o and MCL 211.9(a). Wexford was incorporated with charitable purposes and has a charity care policy in place; it owns and occupies the property in question; and that property is used solely for the charitable purposes for which it was incorporated. Importantly, Wexford has

an open-door policy, accepting all persons who walk through its door regardless of their ability to pay, including Medicare and Medicaid beneficiaries.

Medicare and Medicaid often reimburse providers at rates far below the actual costs of providing care. As a result, clinics like the Wexford Clinic may become scarce, affecting access to care for the elderly and needy. However, the Court of Appeals erroneously ruled that any reimbursement for services rendered, no matter how far below costs, is per se not charity. This ruling is in direct contravention of case law interpreting MCL 211.7o and the definition of charity adopted by this Court. Care provided to Medicare and Medicaid beneficiaries is not only a gift to the recipients, but it greatly lessens the burdens of government. Ambulatory care and preventative care are far less expensive to deliver than emergency care, but emergency care is often the only option for a beneficiary living in an area where few, if any, providers accept Medicare and Medicaid patients.

Wexford also qualifies for tax exemption under MCL 211.7r because its clinic serves the public health and is operated for hospital purposes. The Court of Appeals erroneously held that a "fairly typical medical practice" per se could not qualify for exemption. However, a fairly typical medical practice is a for-profit institution that turns away those who cannot pay and closes its doors to Medicare and Medicaid beneficiaries. Clinics such as the Wexford Clinic are not typical, and their presence in smaller communities is not only "laudable," but necessary to the public health under the circumstances.

Also, the Court of Appeals erroneously held that treating patients individually does not serve the public health, and yet the vast majority of traditional public health services require that individual members of the public are treated or served as part of a greater mission. Finally, to qualify as a hospital purpose under MCL 211.7r, Wexford must show that its clinic is reasonably

necessary to the competent operation of its owner hospitals, Mercy Hospital Cadillac and Munson Medical Center. Providing traditional hospital services in an ambulatory care setting increases the accessibility of quality health care for members of the community—the services are the same, it is only the situs of delivery that has changed in response to an evolving health care delivery system.

For the foregoing reasons and the potential impact to its nonprofit, health care provider members, Amicus Curiae respectfully requests this Court to reverse the Court of Appeals' Opinion on all issues before this Court, and remand the case to the Michigan Tax Tribunal to enter an Order granting exemption to Petitioner-Appellant in order to secure access to quality health care to all Michigan residents.

ARGUMENT

I. The decisions of the Court of Appeals and Tax Tribunal denying Petitioner-Appellant charitable exemption under MCL 211.7o and MCL 211.9(a) conflict with prior appellate decisions on this issue and err as a matter of law because Petitioner-Appellant qualifies for every element of the exemption as drafted by the Michigan Legislature.

Under Michigan law, "real or personal property owned and occupied by a nonprofit charitable institution while occupied by that nonprofit charitable institution solely for the purposes for which it was incorporated is exempt from the collection of taxes under [The General Property Tax] act." MCL 211.7o. Further, MCL 211.9(a) exempts from taxation "[t]he personal property of charitable, educational, and scientific institutions." The first question in the instant Appeal is whether a medical clinic operated by a joint venture comprised of two nonprofit health systems qualifies as a nonprofit charitable institution under these statutory provisions.

Wexford is a Michigan nonprofit corporation, as clearly reflected in its Articles of Incorporation. Wexford's charitable purposes are to "promote the health and well-being of the

community . . . by providing access to quality and affordable health care services to the communities it serves through one or more facilities operated by the Corporation or otherwise." Wexford Medical Group, Amended and Restated Articles of Incorporation (filed Feb 25, 1999), attached as **Exhibit A.** These Articles include restrictions common to tax-exempt entities, including provisions that prohibit inurement of the assets of the corporation to private individuals, and dedicate its assets to charitable purposes. Wexford is recognized as exempt from federal income taxation as a charitable entity pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") and is recognized by the State of Michigan as a tax-exempt charity. (Wexford Medical Group v City of Cadillac, Trial Transcript, MTT Docket No. 276304, at 17:8-10 (May 20, 2002) [hereinafter "MTT Transcript"], attached as **Exhibit B.**) However, the local taxing authority has determined that the Wexford Clinic is not charitable, and thus should be subject to continued property taxation.

An entity seeking charitable exemption from property tax under State law must prove three[1] elements, by a preponderance of evidence: (1) that the property is owned and occupied by the entity; (2) that the entity is a library, benevolent, charitable, educational, or scientific institution, and (3) that the building and other property was occupied by the entity solely for purposes for which the entity was incorporated. See OCLC Online Computer Library Ctr, Inc v City of Battle Creek, 224 Mich App 608, 612; 569 NW2d 676 (1997). Based on the express language of MCL 211.7o and existing precedent interpreting its requirements, Wexford qualifies for charitable exemption under the Michigan General Property Tax Act.

Wexford meets all the elements necessary to qualify for the charitable tax exemption under MCL 211.7o and MCL 211.9(a): it owns and occupies the property where the clinic is

operated; it is incorporated as a charitable institution, and it occupies (and uses) the clinic property for the sole purposes of fulfilling its charitable mission, as well as that of its owners, Munson Healthcare and Trinity Health-Michigan. Munson Healthcare, a Michigan nonprofit, tax-exempt corporation, operates Munson Medical Center. Trinity Health-Michigan, a Michigan nonprofit tax-exempt corporation operates Mercy Hospital Cadillac. To begin, no one disputes whether the first two elements of the statute are met—Wexford owns and occupies the clinic property, and it was incorporated as a charitable institution. At issue is whether Wexford operates the clinic for the sole purpose of fulfilling its charitable mission.

The Court of Appeals refused to grant Wexford's charitable exemption partly because it only provided charity care to thirteen people during the tax years in question, amounting to $2,358.24 in total "free" care given. (McLaren Reg'l Med Ctr v City of Owosso, unpublished opinion per curiam of the Court of Appeals, decided Aug 24, 2004 (Docket Nos. 244386, 250197), at 2 [hereinafter "Opinion"], attached as **Exhibit C**.) As shown infra, this is an error in law because the decision imposes restrictions not set forth in the statute, and because Michigan case law holds that care does not necessarily need to be provided for free to qualify as charitable; an activity can still be charitable even though it is reimbursed in part by government programs.

Because of its analysis, the Court of Appeals completely discounted the fact that Wexford operates the only clinic in the Cadillac area that has an open-door policy and accepts all Medicare and Medicaid patients in furtherance of its charitable mission; it is the only such clinic in the Cadillac area that offers complete accessibility to quality medical care for all adults and children. (Petitioner-Appellant Brief on Application for Leave to Appeal, at 6, [hereinafter "Petitioner-Appellant Brief"], attached as **Exhibit D**; Opinion, at 2.) This open-door policy

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[1] The test originally contained a fourth element—that the claimant must have been incorporated under the laws of Michigan—which was later found to be unconstitutional. See Chauncey & Marion Deering McCormick Found v

attracts a patient base that is 50% Medicare and Medicaid eligible, and is largely responsible for making Wexford the largest primary health care provider in the greater Cadillac community. (Petitioner-Appellant Brief, at 6.) During the tax years at issue, Wexford's owners were forced to subsidize almost $2 million dollars worth of care provided by Wexford because of government reimbursement that fell far short of the costs to deliver health care. (Id. at 9; MTT Transcript at 43:22-25, 44:1-5.) Rather than closing its doors to Medicaid and Medicare patients, which would cut a substantial portion of these major losses, Wexford continues to operate its clinic at a loss under its charitable mission of providing clinical access to the surrounding communities in Northern Michigan.

Cadillac and the surrounding communities of Manton, McBain, and Mesick are economically depressed and rural in nature and have been designated by the federal government as a health professional shortage area. (Petitioner-Appellant Brief, at 2.) The clinic was previously operated by for-profit owners, who were forced to close its doors because they simply could not operate it profitably. (Id. at 2.) Trinity Health-Michigan and Munson Healthcare chose to create Wexford in furtherance of their charitable missions, by which Wexford is bound in its operation through its Amended and Restated Articles of Incorporation, its Bylaws, and its physician employment contracts. (Id. at 3.)

In denying charitable tax exemption to Wexford, the Court of Appeals felt, in part, that "Wexford's aim is to become profitable." (Opinion, at 2.) This statement is very misleading—especially in light of its holding that charity must be given for free. Simply because a charitable institution wishes to operate "profitably," where its receipts exceed their costs, it does not mean that it wants to abandon its nonprofit, charitable mission and become a for-profit business corporation. The profitability of a nonprofit organization is never at issue—it is what the

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Wawatam Township, 186 Mich App 511, 515; 465 NW2d 14 (1990).

organization does with its profit that is pertinent to the analysis. According to the Court of Appeals, only a nonprofit organization that operates in the red could be considered charitable, and such an assertion is not only disingenuous, it defies logic and the law.

Wexford was granted tax exemption by the Internal Revenue Service under Section 501(C)(3) of the Code. Further, Wexford meets all the elements of the State charitable exemption under MCL 211.7o; therefore, the Tax Tribunal and the Court of Appeals erred in applying the statute to the facts and circumstances in this case in determining that its operations were not charitable, and thus, ultimately erred in holding that Wexford did not qualify for charitable exemption under State law.

A. The Court of Appeals erred as a matter of law when, in contravention of prior case law, it ruled that Petitioner-Appellant must provide care wholly free of charge to qualify for exemption and that any reimbursement by government or private payers invalidates its charitable acts.

This Court has defined "charity" for the purposes of interpreting the relevant provisions of the General Property Tax Act as follows:

> [C]harity . . . [is] a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

Michigan United Conservation Clubs v Lansing Township, 423 Mich 661, 671; 378 NW2d 737 (1985) (citing Ret Homes of Detroit Annual Conference of United Methodist Church, Inc v Sylvan Township, 416 Mich 340, 348-349; 330 NW2d 682 (1982) (emphasis in original)). In applying this test, courts focus on "whether [an organization's] activities, taken as a whole, constitute a charitable gift for the benefit of the general public without restriction or for the benefit of an indefinite number of persons." Id. at 673 (citations omitted).

In holding that Wexford was not exempt, the Court of Appeals concluded that Wexford's open-door policy in accepting all Medicare and Medicaid patients "did not render it a charitable institution." (Opinion, at 2.) As such, one of the questions in this Appeal becomes whether, under the case law definition of charity, the "gift" must be wholly uncompensated, and whether "indefinite number of persons" means that there is no limit to the number of those who benefit. Does the fact that some compensation for services is received mean that there is no charity involved? To be deemed "charitable" under this definition, is a charitable organization obliged to decline all sources of reimbursement for services rendered and rely wholly upon charitable donations? To so rule would be to re-write the law.

The scope of "charity" in this context has been considered many times by Michigan courts, and those courts have declined to follow the road proposed by the Court of Appeals in this case. Indeed, Michigan courts have for years held that an institution qualifies for the charitable exemption despite a policy of charging those who can pay.

For instance, this Court has held that a public hospital was still a charitable institution even though it charged all patients for services rendered, but collected from the poor amounts that were less than cost and did not collect at all from indigent patients. Auditor Gen v R B Smith Mem'l Hosp Ass'n, 293 Mich 36, 40-41; 291 NW 213 (1940). See also Ret Homes of Detroit, supra at 350 n2 (stating that "a non-profit corporation will not be disqualified for a charitable exemption because it charges those who can afford to pay for its services as long as the charges approximate the cost of the services").

In R B Smith Memorial, the City of Alma argued that a nonprofit hospital was not a charitable institution because it charged all its patients for services rendered; however, the hospital had a policy of collecting no money from the indigent and treated county patients and

afflicted children below cost—only those with means were required to pay the full charge. R B Smith Memorial, supra at 38. The City of Alma also argued that the hospital was not charitable because it sometimes operated in the black. Id. However, it also operated at times in the red, with charitable donations only partially covering such losses. Id.

This Court analyzed whether charitable exemption was appropriate under the circumstances using a two-pronged test: "'whether the organization claiming the exemption is a charitable one[] and . . . whether the property on which the exemption is claimed is being devoted to charitable purposes.'" Id. (quoting Exemption of Charitable Organization from Taxation or Special Assessment, 34 ALR 634, at 635). Although this issue was not analyzed in the context of the General Property Tax Act as it existed in 1940, its two prongs are remarkably similar in scope and language to the second and third prongs of the test used today to analyze exemption under MCL 211.7o. (The first prong—whether the property was owned and occupied by the organization—is not at issue in the present Appeal.) In its analysis, the R B Smith Memorial Court noted the following:

> '[A]ny body not organized for profit, which has for its purpose the promotion of the general welfare of the public, extending its benefits without discrimination as to race, color, or creed, is a charitable or benevolent organization within the meaning of the tax exemption statutes. . . . [T]he fact that a charge is made for benefits conferred, against those who are able to pay, in no way detracts from the charitable character of an organization.'

Id. at 38-39 (citing 34 ALR, supra at 635 (emphasis added)). A nonprofit corporation is sufficiently charitable for the purposes of exemption "when the charges collected for services are not more than are needed for its successful maintenance." Id. at 39 (citing Mich Sanitarium & Benevolent Ass'n v City of Battle Creek, 138 Mich 676, 683; 101 NW 855 (1904)). Here, no dividends or profits were ever paid to the owners, and any excess revenue the hospital collected was used to purchase new equipment and build additions to the hospital. Id. at 38. This Court

was surprised that the City of Alma would even want to tax the hospital because it conferred such great benefit to the surrounding community. Id. at 41.

In Huron Residential Services for Youth, Inc v Pittsfield Charter Township, the Court of Appeals held that a residential home for troubled youths still qualified for charitable tax exemption even though it received State aid to cover the vast majority of its costs. Huron Residential Servs for Youth, Inc v Pittsfield Charter Township, 152 Mich App 54, 61-63; 393 NW2d 568 (1986). Here, the taxing authority argued and the Tax Tribunal agreed that the residential home offered no "gift" in the context of the definition of charity adopted by this Court in Retirement Homes because it accepted a per diem rate from the State to cover more than 99% of its funding. Id. at 62. The Court of Appeals disagreed, noting that clearly the youths receive a gift, stating that "the proper focus is whether there is a gift for the benefit of the residents." Id. It does not matter whether the State pays for the gift. Id. Further, the Court of Appeals was troubled with the Tax Tribunal's analysis, which focused only on the percent of State funding provided to the residential home. Id. It stated that drawing a line in the sand to grant exemption is problematic: "Will 85% or 55% or 45% funding by the state permit exemption?" Id.

In other words, the mere fact that Wexford receives Medicare and Medicaid reimbursement to partially cover the costs of delivering care does not foreclose recognition as a charitable institution, particularly with respect to health care, which in and of itself has long been recognized as a charitable activity.[2] In part, the charitable nature of Petitioner-Appellant can be

[2] Although the mere fact that an entity has qualified for federal income tax exemption is not determinative of eligibility for the property tax exemption in Michigan, Michigan has traditionally considered the federal interpretation or even given deference to the Federal interpretation of what constitutes charity for purposes of tax exemption under Section 501(c)(3) in making its property tax exemption determinations. The Internal Revenue Service ("IRS") states that "[i]n the general law of charity, the promotion of health is considered to be a charitable purpose." Rev Rul 69-545, attached as **Exhibit E** (citing Restatement (Second) of Trusts, §§ 368, 372, attached as **Exhibit F**; IV Scott on Trusts, §§ 368, 372 (3d 1967)). Further, The IRS states as follows:

> The promotion of health, like the relief of poverty and the advancement of education and religion, . . . is deemed beneficial to the community as a whole even though the class of beneficiaries

found in its "open-door" policy, which offers care to all in need without regard to reimbursement. Its charity care policy offers wholly uncompensated care to those who meet financial requirements and do not qualify for coverage under governmental or other benefit programs. Wexford freely accepts Medicare and Medicaid patients, limited only by its capacity. However, the taxing authorities argued and the Court of Appeals agreed, that the receipt of any reimbursement meant that there was no gift. (Opinion, at 2.) In light of the Michigan Sanitarium holding, if the reimbursement that Wexford receives exceeded—or even equaled—the cost of the care provided, this might be true. But in the case of Wexford, even where reimbursement for services rendered is received, it is often significantly less than the cost of offering the care. Such reimbursement simply does not invalidate the charitable nature of the gift as a matter of law.

When analyzing this Court's definition of charity, the gift must be "for the benefit of an indefinite number of persons . . . ." Michigan United Conservation Clubs, supra at 671. Even though Wexford only treats the members of the greater Cadillac community, including all Medicare and Medicaid beneficiaries, its operation is a benefit to the taxpayers of this State because it helps reduce the costs of treating these beneficiaries who would otherwise only have access to much more expensive treatment in a hospital emergency room.

Medicare reimbursement for outpatient physician services is "generally regarded as minimally adequate to cover the costs experienced by health care providers." Health Mgmt Assocs, The Future of Michigan Medicaid: Issues, Trends and Principles for Reform, at 3 (Prelim Rep't May 2003), available at http://www.mhaarchives.org/hmastudy/study_full.htm, attached as **Exhibit G**. However, the gap between cost and reimbursement is widening because

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> eligible to receive a direct benefit of its activities does not include all members of the community, such as indigent members of the community, provided that the class is not so small that its relief is not of benefit to the community.

Id. (emphasis added).

Medicare reimbursement has been subjected to cuts for many years, while the cost of providing care has skyrocketed. The gap is even greater with respect to Medicaid. To understand the absent nexus between cost and reimbursement in the Medicaid program, consider this fact: "In 2003, Michigan Medicaid reimbursement rates for physicians [were] only about 60% of the corresponding rates for the Medicare program." Id. If Medicare barely covers the cost of rendering care, then Medicaid—at 60% of Medicare reimbursement—clearly falls far short of meeting those costs. At the same time, Medicaid enrollment is increasing dramatically. Id. Presently, Michigan has over 1.4 million residents enrolled in the Medicaid program, the highest number in its history. Access to Health Care Coalition, Closing the Gap: Improving Access to Health Care in Michigan, at 6 (May 2004 Update) [hereinafter "Improving Access"], attached at **Exhibit H**. This increase in enrollment, in addition to cuts in federal funding, will create an estimated $434 million budget shortfall in 2005. Id. Governor Granholm plans to cut an additional $125 million from the Medicaid budget in 2006 to be achieved through additional cuts in reimbursement of 4%. Chad Selweski, Medicaid Cuts Fought by Doctors, Hospital, The Macomb Daily, May 13, 2005, at 1, attached as **Exhibit I**. At present, there is simply no indication that the health care crisis will lessen in the future.

As Medicare and Medicaid reimbursement continues to fall further behind the cost of rendering care, more and more practitioners are refusing to accept these patients. In January 2003, the American College of Physicians reported that declining Medicare reimbursements have contributed to a growing dilemma: beneficiaries are having a harder time finding physicians. Am College of Physicians, The Growing Crisis in Access to Medicare Care: Causes and Remedies, at 3 (Jan 21, 2003), available at http://www.acponline.org/hpp/growing_crisis.htm, attached as **Exhibit J**. The number of physicians who said they accept all new Medicare fee-for-

service patients dropped 7.2% between 1999 and 2002. Id. (citing Medicare Payment Advisory Comm'n, 2002 Survey of Physicians About Medicare (Mar 2003), available at http://www.medpac.gov/publications/contractor_reports/Mar03_02PhysSurvRpt2.pdf, attached as **Exhibit K**). The National Center for Policy Analysis recently reported on this alarming trend[3]:

- The number of physicians who will no longer accept new Medicare patients in 2003 increased by 78% over the previous year.
- Less than two-thirds of participating physicians have decided to renew their Medicare contracts for 2003.
- Of those physicians who currently accept all new Medicare patients, only one in five will continue to do so.
- Only one-third of physicians plan to maintain their current policy of accepting new Medicare patients at all.

Nat'l Ctr for Policy Analysis, Declining Access for Medicare Patients, (Jan 22, 2003), available at http://www.ncpa.org/iss/hea/2003/pd012203g.html, attached as **Exhibit L**.

Finding a physician who accepts Medicaid patients is a much more difficult task. A study revealed that during the early 1990s, one-third of self-employed physicians practicing in solo or small group practices did not participate in Medicaid, and 64% of those participating in Medicaid limited the number of Medicaid patients they accepted. Janet D. Perloff et al, Which Physicians Limit Their Medicaid Participation, and Why, 30:1 HSR: Health Servs Res 7, 21 (Apr 1995, Pt I), available at http://www.hsr.org/hsr/PDF/307.pdf, attached as **Exhibit M**. In a 2005 voluntary survey of Michigan State Medical Society member physicians, nearly 20% of responding physicians stated that they "do not intend to continue accepting Medicaid patients in the coming year."[4] Julie Novak, 2005 MSMS Physician Data Survey on Practice Characteristics,

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[3] These statistics were obtained from an online survey of the members of the American College of Physicians-American Society of Internal Medicine.

[4] See Novak, supra. This survey was mailed to actively practice members of Michigan State Medical Society, and an "appropriate sample was again returned." Id. at 8. The survey also states that 82% of responding physicians continue to accept Medicaid, Id. at 12; however, this number may not necessarily be reflective of how many

104 Mich Med, May/June 2005, at 8, 16, attached as **Exhibit N**. Moreover, only two-thirds of the surveyed physicians accept Medicaid patients. In 1999, eighty-eight percent of doctors surveyed participated in Medicaid with seventy-seven percent of doctors in 2001. Id. Unavailability of Medicaid providers has forced these patients to wait until they are chronically or acutely ill to seek care in a hospital emergency room where they cannot be turned away, which greatly increases the cost of care to the State and likely decreases the patients' prognoses.

These basic economic facts of today's Medicare and Medicaid reimbursement explain, in large part, why the mere willingness to accept an unlimited number of Medicare and Medicaid patients is a gift to the community as a whole. The Court of Appeals completely discounted the fact that Petitioner-Appellant has an open-door policy, that Petitioner-Appellant accepts an unlimited number of Medicare and Medicaid patients, and that the inadequate reimbursement paid resulted in millions of dollars worth of services provided to these patients that was, in fact, not compensated. (Opinion, at 2.) The Court of Appeals stated that the community presence of the clinic was "laudable," but that its "services . . . [were] not charity. Rather, [these services] were performed in exchange for payment from the governmental programs." (Id. at 2.) This reasoning is myopic: it ignores the overall benefit provided by the Wexford Clinic and the larger public policy concerns. First, services reimbursed by Medicare and Medicaid are still gifts to the beneficiaries and the community despite partial reimbursement from other sources other than the nonprofit health care providers. See Huron Residential Servs, supra at 62. Second, it ignores the benefit to all taxpayers in the form of reduced costs in providing care to the elderly and needy in an outpatient setting. As such, the Court of Appeals' reasoning not only ignores the public

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physicians regularly treat Medicaid patients and could include those physicians who greatly limit the number of Medicaid patients they treat. Depending on how the question was interpreted by the responding physicians, the number could merely represent the number of physicians who possess a Medicaid provider number.

policy behind effectively caring for the elderly and needy, but it also ignores case law precedent on this issue and errs as a matter of law.

B. The holding of ProMed Healthcare v City of Kalamazoo, where a family practice failed to meet its evidentiary burden that it provided any charity care, is inapplicable to the present Appeal.

The Court of Appeals based its decision in this matter on its holding in ProMed Healthcare v City of Kalamazoo, 249 Mich App 490; 644 NW2d 47 (2002), which can be credited as the genesis of the exemption revocation revolution in this State. Innumerable cities and townships are indiscriminately denying or revoking long-standing property tax exemptions of medical clinics operated by charitable organizations in a scorched-earth manner, without analyzing the facts in each particular circumstance to determine whether the factual and evidentiary limitations of ProMed truly apply in each case.

The Court of Appeals upheld the denial of exemption in ProMed because that medical practice failed to document or prove by a preponderance of evidence that charity care was actually provided under its policies. Id. at 499-500. In ProMed, the Court of Appeals reasoned that the medical practice was a "fairly typical family medical practice, where patients are expected to pay for medical care, either through private or governmental insurance programs." Id. at 500. It ruled that the only form of charity that would qualify for exemption are those activities provided completely free of charge, discounting the charity a patient receives when a small portion of the costs of his or her care is covered by Medicare or Medicaid. Id. at 500-501. The Court of Appeals feared that if it granted exemption to medical practices such as the one in ProMed—presumably those who make no effort to prove that they actually provide charity care—then all medical facilities would attempt to qualify for the charitable tax exemption.

At first blush, the Court of Appeals' fear may seem comprehensible when taken in context of the specific facts and lack of evidence in ProMed. However, in subsequent applications of the ProMed holding, this fear has taken on a broader scope—that if tax-exempt status is offered to any medical practice, then the State would have to offer exemption to all medical practices. This broader fear is simply unfounded. Charitable medical clinics have had their tax-exempt status in Michigan for decades, and yet there has been no flood of for-profit providers in the State seeking nonprofit status in order to gain exemption. There are too many disincentives that exist for for-profit health care providers to operate as charitable institutions; for-profit health care providers would face not only new, significant annual income restrictions, but they would also be precluded from receiving the revenue from the sale of their businesses at the end of their careers.[5]

Despite a reality that is at odds with the Court of Appeals' fear in ProMed, it appears as though subsequent applications of this decision have created a new rule of law where every nonprofit medical practice per se does not qualify for a tax exemption under MCL 211.7o if it expects any patient or the government to pay even partial reimbursement for services provided. This application is inconsistent with the intent of the statute and case law precedent. ProMed simply does not stand for the proposition that all or most nonprofit medical clinics do not qualify for tax exemption, but that is exactly how city and municipal taxing authorities are interpreting

[5] As a charitable organization under Section 501(c)(3) of the Code, a health care provider would be required to avoid payment of any dividends or compensation that is more than a fair market value to its directors, officers, and employees under the private inurement and private benefit doctrines. Section 4958 of the Code also imposes on the recipient excise taxes of up to 225% of the excess over fair market value in many cases. Further, the Michigan Nonprofit Corporation Act ("NPCA") defines "corporation" to only include nonprofit corporations. MCL 450.2106(1). Section 301 of the NPCA clearly states that nothing in the NPCA shall be deemed to permit assets "held by a [nonprofit] corporation for charitable purposes to be used, conveyed or distributed for noncharitable purposes." MCL 450.2301(5). Section 301 of the NPCA also precludes the payment of any dividends to individuals or for-profit corporations, even if they are shareholders of the corporation. MCL 450.2301(3). Michigan nonprofit corporations may pay dividends to their shareholders only if the corporate purposes include providing a benefit to its shareholder corporation. MCL 450.2301(3)(c). Given the statutory definition of corporation as including only

it, as is evidenced by the avalanche of tax exemption revocations since the ProMed holding. The issue addressed in ProMed was only an evidentiary issue, and taxing authorities should only rely on its holding in that context. All that ProMed adds to Michigan jurisprudence is that a formal charity care policy, without more, is insufficient evidence to meet the burden for charitable exemption under MCL 211.7o.

Unlike the family practice in ProMed, Wexford has shown facts and evidence that it is qualified for exemption under MCL 211.7o. In the present Appeal, Petitioner-Appellant has documented and shown that it operates the Wexford Clinic in pursuit of its charitable mission. It provides care to all who need it: some for free, and some reimbursed by governmental programs. Its presence in a rural, health professional shortage area benefits not only all who seek care, but benefits all tax payers because the care it provides to the community is much cheaper than that provided in an emergency room. Wexford is a necessary safety net to the provision of health care in Northern Michigan and is a charitable institution. Petitioner-Appellant has shown that it owns and operates the clinic in question, that it was incorporated as a nonprofit charitable institution, and that it operates the Wexford Clinic for the sole purpose of fulfilling its charitable mission, and therefore, qualifies for exemption under MCL 211.7o and MCL 211.9(a).

In sum, Petitioner-Appellant qualifies for exemption under MCL 211.7o and MCL 211.9(a) because it meets all the elements of the statutes. Further, Michigan appellate case law has ruled that a policy accepting government reimbursement or charging those who can afford to pay does not necessarily rule out exemption. As such, Amicus Curiae respectfully asks this Court to reverse the Court of Appeals decision denying exemption under MCL 211.7o and

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nonprofit corporations, the provision precludes payment of dividends to any for-profit corporation MCL 450.2106(1); MCL 450.2301(3)(c).

remand the case to the Tax Tribunal to enter an Order granting Petitioner-Appellant's charitable exemption.

II. **The decisions of the Court of Appeals and Tax Tribunal denying Petitioner-Appellant exemption under MCL 211.7r conflict with prior appellate decisions on this issue and err as a matter of law because Petitioner-Appellant qualifies for every element of the exemption as drafted by the Michigan Legislature.**

The Court of Appeals also erroneously held that Petitioner-Appellant was not eligible for exemption under MCL 211.7r, the public health exemption. (Opinion, at 3.) Michigan's General Property Tax Act grants tax exemption for public health purposes, providing as follows:

> The real estate with the buildings and other property located on the real estate on that acreage, owned and occupied by a nonprofit trust and used for hospital or public health purposes is exempt from taxation under this act, but not including excess acreage not actively utilized for hospital or public health purposes . . . .

MCL 211.7r. A "nonprofit health trust" has been held to include nonprofit corporations. Oakwood Hosp Corp v State Tax Comm'n, 385 Mich 704, 708; 190 NW2d 105 (1971). The Michigan Property Tax Code does not define what constitutes public health purposes, and under these circumstances, a court may consult a dictionary for guidance. Rose Hill Ctr v Holly Township, 224 Mich App 28, 33; 568 NW2d 332 (1997) (citing Yaldo v North Pointe Ins Co, 217 Mich App 617, 621; 552 NW2d 657 (1996)). In Rose Hill, the Court of Appeals defined public health as "the art and science of protecting and improving community health by means of preventative medicine, health education, communicable disease control, and the application of the social and sanitary sciences." Id. (citing The American Heritage Dictionary (2d college ed)).

Here, the Court of Appeals held that a treatment facility for mentally ill adults was exempt from taxation under MCL 211.7r because the facility was operated for public health purposes. Id. It considered the following in reaching its decision: Rose Hill treated individuals and not the public at large through evaluation, diagnosis, treatment, rehabilitation, and

reintegration programs; it employed psychiatrists and allied health professionals to deliver care to the individual patients; it provided 24-hour care to its patients; it was open to all adults without regard to race, religion, or sex; and the facility accepted payment from Medicare and Medicaid as well as third-party payers. Id.

Other than 24-hour care and reintegration services, Petitioner-Appellant offers all these services as well as many others to Cadillac and the surrounding communities. It is important to note that the Rose Hill court did not consider the treatment of individual patients or the acceptance of Medicare or Medicaid as being dispositive on this issue. In the instant case, the Court of Appeals ignores this precedent by stating that "the public health exemption under MCL 211.7r is not available for 'a fairly typical medical practice, where patients are expected to pay for medical care received, either through private or governmental insurance programs.'" (Opinion, at 3 (citing ProMed, supra at 500).)

A. A nonprofit health care center with an open-door policy which accepts any patient in need of care, which operates at a loss, but which still offers public health education classes to the public that it serves, is not a "fairly typical medical practice."

In holding that Petitioner-Appellant was not exempt under the public health exemption, the Court of Appeals greatly expanded the fact-specific, evidentiary ruling in ProMed, creating a blanket rule of law that precludes any "fairly typical medical practice," as defined by the Court of Appeals, from tax exemption for public health purposes. (Opinion, at 3.) The Court of Appeals appears to believe that only one factor is conclusive in determining what constitutes a fairly typical medical practice—that patients are expected to pay for medical care they receive, either through private or governmental insurance programs. This overly generalized definition does nothing to capture the true essence of what is fairly typical in the practice of medicine. Michigan case law has held that charging patients, even where the government reimburses for

that charge, is still considered charitable under MCL 211.7o. See, e.g., R B Smith Mem'l Hosp Ass'n, supra; Ret Homes of Detroit, supra; Huron Residential Servs for Youth, Inc, supra.

Further, if the Court of Appeals' analysis is adopted, it would force a nonprofit health care provider to first prove that it qualified for charitable exemption under a new, narrow interpretation of "charitable" under MCL 211.7o (that it is not fairly typical provider because it refuses all reimbursement) before it could ever qualify for the public health exemption under MCL 211.7r. Certainly, the Michigan Legislature never intended such a result. Even if the Court of Appeals is correct in its interpretation of the MCL 211.7r, the Wexford Clinic is not a "fairly typical medical practice." Wexford's open-door policy essentially guarantees that a high proportion of the patients it treats will be Medicare and Medicaid patients. As discussed supra, reimbursement from these sources is inadequate, and often falls far short of compensating providers for the costs of care. It certainly leaves no money for profit. By agreeing to care for all in need, Petitioner-Appellant has agreed to forego any expectations of significant profitability. The willingness to forego such profit, the willingness to serve the needy, and the emphasis on community education and community benefits typifies a charitable endeavor and undoubtedly serves the public health.

A fairly typical medical practice is a for-profit organization that pays its owners profits or dividends. A fairly typical medical practice compensates its owners and employees with wages that are commensurately higher than a nonprofit health center. A fairly typical medical practice is located in a metropolitan or suburban area for increased accessibility to large numbers of patients, which ultimately helps to maximize profit. A fairly typical medical practice often refuses to treat any Medicare or Medicaid patients, leaving the poor and elderly to their own devices. A fairly typical medical practice turns away the uninsured unless they are willing to pay

cash. A fairly typical medical practice does not offer sports physicals to students for the price of a fast-food meal and does not donate half the charge to the student's sports program. (MTT Transcript, at 53:2-7.) A fairly typical medical practice does not operate under a charity care policy. A fairly typical medical practice does not offer public health education classes to the community because there is no profit in doing so. And finally, a fairly typical medical practice declares bankruptcy and closes its doors when it cannot make ends meet or alternatively is sold to someone who can run it by subsidizing its costs.

In other words, Wexford is not a fairly typical medical practice, and its presence in a small, rural community is not only "laudable" but necessary to the public health of Cadillac and the surrounding communities. Only when these many factors are considered can a court analyze what truly characterizes a fairly typical medical practice—and whether a practice charges patients or the government for its services is a grossly insufficient factor in and of itself and thus, should not be held to be outcome determinative in granting or denying exemption.

Moreover, the Michigan Tax Tribunal found and the Court of Appeals agreed that the "treatment of patients is inherent to the medical profession" and, therefore, cannot be characterized as public health purposes. (Wexford Medical Group v City of Cadillac, MTT Docket No 276304, 30 (Jul 17, 2003) [hereinafter "Wexford MTT"], attached as **Exhibit O**; Opinion, at 3.) However, this finding is disingenuous and is in contravention of current case law interpreting the public health exemption. See Rose Hill, supra. If this reasoning is allowed to stand, no standard medical services could ever qualify as public health services. The vast majority of public health activities require that individual members of the public be treated or served as part of a greater mission. Providing mass immunizations requires that each individual patient is treated separately. Providing care during disaster relief requires that each person is

evaluated and treated individually. Preventing the spread of communicable diseases also requires that each member of the public is treated on a case-by-case basis. Certainly, the identification and isolation of the person known as "Typhoid Mary" in New York in 1906 served the public health by eradicating a carrier of contagion, which, by necessity, involved intervention with one single patient. It is no less true today that identification and proper treatment of carriers of contagious disease often occur in a one-on-one situation. This fact does not in any way dilute the public health benefit. By providing care to all in need, by accepting an unlimited number of Medicare and Medicaid patients, and by providing extensive community education and health screening services, the clinic operated by Petitioner-Appellant contributes to the public health one individual at a time, and one classroom at a time. Serving the public health and medically treating individuals are simply not mutually exclusive concepts.

B. Wexford Medical Group qualifies for exemption under MCL 211.7r because it offers preventative medicine and communicable disease control as well as health education classes.

Under the Rose Hill definition of "public health," Wexford qualifies for tax exemption under MCL 211.7r. The services Wexford provides include preventative medicine and communicable disease control, and it offers health education classes to the public regardless of ability to pay. (Petitioner-Appellant Brief, at 9, 24.) Wexford is the largest primary health care provider in an area where health care is in short supply, providing preventative medical care to the patients it treats. (Id. at 6, 22.) Wexford helps prevent the spread of communicable diseases by offering the public flu-vaccine clinics and pneumovax clinics. (Id. at 24.) The public health education classes and health screening services it offers are numerous, most of which are not offered by any other area medical practice or the local hospital, Mercy Hospital Cadillac. (Id. at 23-24.) For instance, Wexford offers health education classes in the following areas: medic first

aid education, American Heart Association CPR, bloodborne pathogens, osteoporosis education, newborn care, international travel health education, medic defibrillator training. (Id. at 23.) It also offers many public health services, many of which are not available elsewhere: sports physicals, carbon-monoxide testing, blood-glucose testing, prostate cancer screening, mammogram screening, respiratory screening, osteoporosis screening and support groups, and indigent drug programs sponsored by many pharmaceutical companies. (Id. at 23-24.) Again, the Court of Appeals felt none of these activities served the public health, but rather were "inherent to the medical profession." (Opinion, at 3.) The health classes and screening clinics offered by Wexford are not inherent in the practice of medicine; in fact, they are not even "fairly typical." They are, however, typical of nonprofit hospital and health system activities—in other words, they are typical of charitable activities. The Court of Appeals' reasoning is in complete contravention of the holding in Rose Hill and its definition of what constitutes public health, and the decision below should be overturned.

C. The operation of outpatient medical clinics by a hospital, including its laboratory and radiology departments, is a "use of real estate for hospital purposes" as contemplated by MCL 211.7r.

MCL 211.7r also exempts from taxation property owned and operated by a nonprofit corporation for hospital purposes. Wexford meets the elements of MCL 211.7r because it owns and operates the Wexford Clinic, it was incorporated as a nonprofit, charitable entity, and it uses the property for hospital purposes as interpreted by Michigan case law.

Historically, hospital purposes have been thought to be related to inpatient care. However, as the practice of medicine evolves, the site of service has likewise evolved. Conditions that formerly required significant periods of hospitalization are now treated on an outpatient basis. Chemotherapy used to require days, often weeks, in the hospital. Now,

outpatient chemotherapy is standard. Historically, cataract surgery required hospital convalescence; now, patients go home the same day as the surgery. Heart attack patients are discharged from the hospital in days, rather than weeks, after the incident. Patients who, fifteen years ago, would have been hospital patients are now treated through outpatient medical care facilities, such as the Wexford Clinic. The treatment rendered is the same—administration of medications, follow-up of symptoms, patient education and rehabilitation, monitoring of response to therapy—only the site of service has changed. It is difficult to understand how the provision of medical care is charitable in the inpatient context, but not in the outpatient context.

Further, a hospital purpose does not necessarily need to include the provision of medical care in order to be eligible for exemption. In Saginaw General Hospital v City of Saginaw, the Court of Appeals held that a daycare center owned and operated by a hospital was exempt from taxation under MCL 211.7r because it was "reasonably necessary for the competent operation of the hospital . . . ." Saginaw Gen Hosp v City of Saginaw, 208 Mich App 595, 599; 528 NW2d 805 (1995). The daycare center served to alleviate high turnover rates and tardiness of employees that would result because the extraordinary child-care needs of its physicians and employees who are generally "required to work emergency, weekend, holiday, and night shifts." Id. The Court of Appeals noted that the daycare center served a hospital purpose because it "advances the hospital's goal of providing more cost-efficient health care to the people of Saginaw." Id.

Indeed, the nexus between ambulatory medical services and hospital purposes is logically discernable—much more so than the relationship between operation of a daycare center and hospital purposes—and yet the daycare center was found to be "reasonably necessary" for the operation of the hospital. When considered in the context of a hospital's mission—the delivery

of accessible and efficient, quality health care services to patients who are able to remain in the community rather than being admitted as inpatients to the hospital—the offering of ambulatory medical services is a logical and necessary part of accomplishing the mission of a hospital.

It is very apparent that if Wexford is forced to close the doors of the Wexford Clinic, the elderly and the needy in the rural Cadillac community will suffer, and the costs of delivering health care will increase for the Federal and State government. Traditionally, when Medicare and Medicaid beneficiaries have no local or accessible place to turn for preventative care, patients wait until their condition becomes critical and then turn to the emergency rooms for care, and unlike fairly typical medical practices, emergency rooms cannot turn individuals away simply because their health care is paid for by governmental programs. The overall costs to the government would increase dramatically because providing preventative care in a clinic setting is much more effective and much less expensive than waiting until a medical condition is exacerbated to the point where emergency care is necessary—emergency stabilization and care is simply more expensive to administer. Further, under these circumstances, patients expose themselves to higher risks of negative prognoses and even death.

The Wexford Clinic offers preventative, ambulatory care to the public, which reduces the burden on the emergency rooms of Mercy Hospital-Cadillac and Munson Medical Center. The Wexford Clinic also houses a laboratory and radiology department to treat its patients more conveniently than the hospitals could. (MTT Transcript, at 23:5-7.) This care frees up emergency room capacity, allowing the physicians to focus on those who truly need emergency care. In the end, Wexford's provision of preventative, ambulatory care is cheaper and more efficient for its patients; cheaper and more efficient for Mercy Hospital-Cadillac and Munson Medical Center; and cheaper for Federal and State taxpayers. As such, the operation of the

Wexford Clinic furthers the accomplishment of the purposes of Mercy Hospital-Cadillac and Munson Medical Center, therefore qualifying it for exemption under MCL 211.7r because the Wexford Clinic is reasonably necessary to the competent operation of its owner hospitals.

In sum, Wexford satisfies all the elements necessary for exemption under MCL 211.7r; it is not a fairly typical medical practice and offers public health services and education to the surrounding community. Wexford's operation of the Wexford Clinic also qualifies as "hospital purposes" under the statute because convenient, preventative care and the provision of laboratory and radiology services are reasonably necessary to the competent operation of its owner hospitals. As such, Amicus Curie respectfully asks this Court to reverse the Court of Appeals' decision denying exemption under MCL 211.7r and remand the case to the Tax Tribunal to enter an Order granting Petitioner-Appellant exemption for public health purposes.

III. The express and unambiguous language of MCL 211.7o and MCL 211.7r does not impose a threshold level of charitable care or public health services in order to qualify for exemption, and the Tax Tribunal and judiciary should not impose such a requirement in the absence of legislative action.

The Tax Tribunal and the Court of Appeals both emphasized their belief that the charitable exemption was not available to Petitioner-Appellant because only a limited number of patients took advantage of the charity care available to them. (Opinion, at 2.) Wexford documented that it only served thirteen patients absolutely free of charge in a two-year time period, while at the same time serving about 44,000 patient visits per year. (Wexford MTT, at 26.) The Court of Appeals did not feel that this was a "sufficient" amount of charitable care; however, it only counted "free" care as charitable. (Opinion, at 2.) It did not consider long-standing precedent holding that services can still be charitable despite government reimbursement. About 50% of Wexford's patient population is Medicare or Medicaid eligible,

and during the tax years at issue, Wexford's owners had to subsidize Wexford's operation with $2 million, largely due to inadequate reimbursement for the patient population that it treats. (Petitioner-Appellant Brief, at 6, 9.)

It is important first to note that the express language of MCL 211.7o and 211.7r is unambiguous and does not mandate that any minimum amount of charitable care or public health activities be provided. "The primary goal of judicial interpretation of statutes is to give effect to the intent of the Legislature." Lane v Kindercare Learning Ctr, 231 Mich App 689, 695; 588 NW2d 715 (1998) (citing Farrington v Total Petroleum, Inc, 442 Mich 201, 212; 501 NW2d 76 (1993)). If the statutory language is unambiguous, a court must "assume that the Legislature intended its plain meaning and the statute is enforced as written." Halloran v Bhan, 470 Mich 572, 577; 683 NW2d 129 (2004) (citing People v Stone, 463 Mich 558, 562; 621 NW2d 702 (2001)). This Court has held that exemption statutes are to be strictly construed in favor of the taxing authority. Michigan Baptist Homes and Dev Co v City of Ann Arbor, 396 Mich 660, 670; 242 NW2d 749 (1976). However, it has also stated that "strict construction does not mean strained construction adverse to the Legislature's intent."[6] City of Ann Arbor v Univ Cellar, Inc, 401 Mich 279, 288-289; 258 NW2d 1 (1977). The courts have a duty to interpret tax exemption statutes using the ordinary rules of construction to give effect to the Legislature's intent. Assoc of Little Friends, Inc v City of Escanaba, 138 Mich App 302, 307; 360 NW2d 602 (1984), lv den, (Oct 15, 1984). The express language of MCL 221.7o and MCL 211.7r does not impose a threshold amount of charity care or public health services in order to qualify for exemption. Had the Legislature wished to impose limitations on the exemptions, such as a "minimum charity care or public health obligation" or an "obligation to provide free care in order to be charitable," it

certainly had the ability to do so. To read into this statute a requirement that charity care must be quantified, or that only free care may be considered, exceeds the authority and proper role of the judiciary. "Under the maxim 'expressio unius est exclusion alterius,' the express mention of one thing in a statute implies the exclusion of other similar things." Saginaw General Hosp, supra at 601 (citing United States Fidelity & Guar Co v Amerisure Ins Co, 195 Mich App 1, 6; 489 NW2d 115 (1992)). As such, because the Legislature has not acted to exclude nonprofit medical practices from exemption, the Tax Tribunal should not look to add exclusions; rather, it should faithfully apply the statutory test. See id.

The Court of Appeals relied on the reasoning in ProMed in ruling that Wexford failed to show that its charitable care constituted nothing more than "an incidental part of its operations" in relation to its operating budget. (Opinion, at 2 (citing ProMed, supra at 500).)[7] However, in ProMed, the medical practice failed to provide "any evidence that it complied with [its] internal charity policy." ProMed, supra at 500 (emphasis added). In other words, the adoption of a charity care policy without evidence of ever using it, as was the case in ProMed, indicates that charity is merely incidental to the medical practice. The Court of Appeals in this case erred in relying on ProMed to come to its conclusion that the Petitioner-Appellant must provide a sufficient amount of charity care in order to qualify for exemption. Unlike the petitioner in ProMed, Wexford presented sufficient evidence to the Tax Tribunal that it not only has a charity care policy, but it also uses this policy to advance the community health of the Cadillac area population.

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[6] "Exemptions from taxation are not to be enlarged by implication if doubts are nicely balanced. . . . On the other hand, they are not to be read so grudgingly as to thwart the purpose of the lawmakers." Trotter v Tennessee, 290 US 354, 356; 54 S Ct 138; 78 L Ed 358 (1933) (citation omitted).

[7] Other cases exist where the judiciary imposed a "sufficient" level of scientific activity to reduce the government's burden in addition to the statutory requirements of MCL 211.7n in order to qualify for exemption, but these are outside the scope of the issue as granted by this Court. See Kalamazoo Aviation Hist Museum v City of Kalamazoo, 131 Mich App 709, 724; 346 NW2d 862 (1984); OCLC, supra at 616-617.

In Hospital Purchasing Service of Michigan v City of Hastings, the Court of Appeals held that a nonprofit corporation, which was incorporated for the purpose of providing efficient purchasing of supplies for its member hospitals, was entitled to charitable exemption for its real and personal property; however, the portion of the property that it leased to the Secretary of State was not entitled to exemption because it was not being used solely for the purposes in which the nonprofit corporation was incorporated. Hosp Purchasing Serv of Mich v City of Hastings, 11 Mich App 500, 505, 508; 161 NW2d 759 (1968). The Court of Appeals interpreted the portion of MCL 211.7 (now MCL 211.7o)—which states that the real property must be occupied by a nonprofit corporation "solely" for the purposes for which it is incorporated—to mean that the charitable "exemption . . . applies only to that property or part of property the substantial use of which is related to the charitable object or other qualifying norms for exemption." Id. at 509. No further analysis was provided, and as such, one can only conclude that the act of leasing out a portion of a nonprofit corporation's property does not constitute a "substantial use" of the property to qualify for exemption.

The Court of Appeals' analysis is flawed for two reasons. First, it essentially added an element to the analysis of the charitable exemption statute which would require a nonprofit charitable corporation to prove that it substantially uses its property for its charitable purposes—a requirement never intended or expressed by the Michigan Legislature in drafting the statute. Second, the Court of Appeals could have reached the same result by relying on the express language of the statute. If a nonprofit corporation leases out property to a tenant, then it obviously does not "own and occupy" the leased portion of the property as required for exemption.

Wexford is not claiming exemption on the 13% of the Wexford Clinic property that is being leased out—the charitable nature of this portion of the property is not at issue in this present Appeal. (MTT Transcript, at 4:12-18.) Further, Wexford has developed a charity care policy, which is used to provide free care to those in need, and it has shown that this charity care policy is an integrated part of its entire operation and mission. Upon review of the charitable care policy, Wexford noted that the terms of the charity care policy might be expanded to better serve the community, and then it revised the policy to increase the income limits and broaden the identity of those eligible for charity care.[8] (Id. at 33:1-15.) Wexford employs two financial counselors who work with patients to assist in getting them into the appropriate available programs, such as Medicaid or Medicare; if the clinic did not provide this service, many more of the Medicaid patients would fall into the "free care" category because they simply do not have the resources to otherwise pay for the costs of their care. (Id. at 35:12-25, 36:1-2.)

Even though only a few patients took advantage of the charity care available, it does not lessen the charitable nature of Wexford. The very fact that a clinic exists that offers the possibility of charity care, whether or not the offer is accepted, creates an important safety net for community health. One of the wonders of this country is that citizens are free, for the most part, to make their own decisions. Often, charity care is offered but declined. (Id. at 35:12-25, 36:1-7.) It is neither the proper role of, nor an obligation of, a charity to force those who might benefit from the charity's assistance to accept that assistance. Even though Wexford encourages indigent patients to use its charity care program, some qualifying individuals choose not to participate in the program because they desire to avoid a perceived stigma. (Id. at 36:3-7.)

[8] At first, Wexford's charity policy was only available to those patients at or below 100% of the Federal poverty line. Upon expansion, those earning from over 100% to 200% of the Federal poverty line earn substantial discounts on the cost of their care. (See MTT Transcript, at 34:1-15.)

In other words, it is merely the role of the charity to ensure that, if desired, charitable assistance is available. Petitioner-Appellant has done just that. Wexford is operated by very well-recognized charitable entities whose overall operations provide substantial amounts of charity care to communities throughout the State of Michigan. Trinity alone provided just under $353 million in charity care in 2000 and 2001. (Id. at 139:5-14.) In 2001, Munson Healthcare had $3.2 million in bad debt, gave $743,000 in indigent care, and incurred slightly over $9 million in losses from treating Medicare patients. (Id. at 139:3-4, 15-24.) What is more important though is that these charitable entities have offered access to these benefits to all those in need in Northern Michigan.

It is the willingness of Petitioner-Appellant to provide medical care to all in need which is the hallmark of charity—not the level or amount of free care given. It is appropriate, indeed vital, that patients who are able to pay for services are expected to do so. To not charge any patients for services rendered would waste precious resources and would be inconsistent with the obligation of a charity to act as a steward of the charitable assets entrusted to it. In summary, Petitioner-Appellant used the real property in question to carry out its charitable mission and the charitable mission of its owners, and revocation of the tax exemption is not justified.

In analyzing Wexford's claim under MCL 211.7r, the Tax Tribunal did concede that the public education classes offered by Wexford were "valuable to those taking advantage of the opportunity, [but] they are not a substantial part of Petitioner's practice." (Wexford MTT, at 30.) Even though Wexford spent $50,000 on health clinics and public health classes, the Tax Tribunal did not find this "significant" because it was operating under a $10 million budget, and this

expense was less than 5% of its operating budget.[9] Considering the size of the Cadillac community, $50,000 is an enormous amount of money to spend on public health education and activities. To compare it as a small percentage of an entire operating budget completely trivializes what Wexford has done for the community. First, the costs incurred in the actual provision of medical services, and overhead for that matter, are enormous in comparison the costs incurred in holding public education classes. Also, the Tax Tribunal never states exactly what threshold percentage of its operating budget a medical clinic would have to spend on public health before it considers these activities to be a substantial part of its operation. Is 10% enough—20%—50%? Nowhere in the express language of MCL 211.7r did the Michigan Legislature impose a "substantial use" requirement—it only requires that the property be "used" for public health purposes. Finally, this analysis ignores the fact that Wexford still provided $50,000 worth of public health education in pursuit of its nonprofit mission despite the fact that it was operating at a loss. If public health education were truly such an insignificant part of Wexford's mission as the Tax Tribunal believed it to be, then it would have simply cut these services and thus reduced the significant losses against its budget.

Focusing on the amount of charity care or public health activities not only misses the forest through the trees, but is not required by MCL 211.7o and MCL 211.7r. In the present Appeal, the Tax Tribunal and the Court of Appeals have judicially legislated a requirement that the Legislature never intended, and they did so in a conclusory manner, without direction or analysis on just how much charity or public health is necessary in order to qualify for exemption under their paradigm. If affirmed, such a paradigm would be, from a practical perspective, unworkable and would do nothing more than encourage more litigation under the same or similar

[9] Although Trinity Health-Michigan and Munson Healthcare provided enormous amounts of free care, these amounts also represent a very small percentage of their overall operating budgets; and yet, no taxing authority would

circumstances. As such, Amicus Curiae respectfully asks this Court to reverse the Court of Appeals in this case as it applied an additional element not required by MCL 211.7o and MCL 211.7r.

CONCLUSION

Amicus Curiae, as well as its members, has a vital interest in the health care of the citizens of Michigan. If the Court of Appeals' decision is allowed to stand, many Amicus Curiae members may be reluctant to remain in or enter into the business of providing primary care. If the Court of Appeals' decision is allowed to stand, primary health care, if provided at off-site clinics owned by nonprofit and tax-exempt providers, will be deemed to be an activity giving rise to property tax liability. Fewer and fewer Amicus Curiae members will provide such primary care services and obtaining such care by a significant segment of Michigan citizens will become a challenge, thus jeopardizing the health of Michigan's citizens.

To affirm the Court of Appeals' decision would be a material injustice to Michigan jurisprudence, to all nonprofit, charitable health care providers which operate tax-exempt clinics and to Petitioner-Appellant. To prevent such a material injustice, Amicus Curiae respectfully requests this Court to reverse the Court of Appeals' decision and remand to the Tax Tribunal to enter an Order granting Petitioner-Appellant's property tax exemption.

MICHIGAN HEALTH & HOSPITAL ASSOCIATION

By: Michael J. Philbrick
MICHAEL J. PHILBRICK (P58125)
201 W. Big Beaver, Suite 315
Troy, MI 48084
(248) 740-7505

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dream of questioning a hospital's charitable mission in this manner.